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**Mock Ford Sales, Inc. and International Association of Machinists and Aerospace Workers, District Lodge 24, AFL-CIO. Case 36-CA-7484**

April 28, 1995

**DECISION AND ORDER**

BY MEMBERS STEPHENS, BROWNING, AND COHEN

Pursuant to a charge filed by the Union on January 13, 1995, the General Counsel of the National Labor Relations Board issued a complaint on January 31, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 36-RC-5594. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On March 31, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On April 3, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent's answer admits that the Union was certified and that the Respondent has refused to recognize and bargain with the Union, but denies that the Union is the exclusive statutory bargaining representative of the unit employees and that the Respondent's refusal to bargain violated the Act.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We, therefore, find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is a State of Oregon corporation, with offices and place of business in Grants Pass, Oregon, where it is engaged in the business of operating an auto dealership including sales, service, and repair of automobiles and trucks. During the 12-month period preceding the issuance of the complaint, which period is representative of all material times, the Respondent, in the course and conduct of its business operations, had gross sales of goods and services valued at in excess of \$500,000, and purchased and caused to be transferred and delivered to its facilities within the State of Oregon goods and materials valued at in excess of \$50,000 directly from sources outside the state, or from suppliers within the state which in turn obtained such goods and materials directly from sources outside said state. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held August 19, 1994, the Union was certified on November 15, 1994, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time automotive technicians, used car technicians, technical apprentices, and technical trainees employed by the Employer at its Grants Pass, Oregon facility, but excluding all parts employees, auto body employees, detailers, office clerical employees, service writers, professional employees, sales employees, supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

Since about November 15, 1994, the Respondent has failed and refused to recognize and bargain with the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By refusing on and after November 15, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor prac-

tices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Mock Ford Sales, Inc., Grants Pass, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the International Association of Machinists and Aerospace Workers, District Lodge 24, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time automotive technicians, used car technicians, technical apprentices, and technical trainees employed by the Employer at its Grants Pass, Oregon facility, but excluding all parts employees, auto body employees, detailers, office clerical employees, service writers, professional employees, sales employees, supervisors as defined in the Act, and all other employees.

(b) Post at its facility in Grants Pass, Oregon, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

the notice, on forms provided by the Regional Director for Subregion 36, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 28, 1995

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James M. Stephens, Member

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Margaret A. Browning, Member

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Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the International Association of Machinists and Aerospace Workers, District Lodge 24, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time automotive technicians, used car technicians, technical apprentices, and technical trainees employed by us at our Grants Pass, Oregon facility, but excluding all parts employees, auto body employees, detailers, office clerical employees, service writers, pro-

fessional employees, sales employees, supervisors  
as defined in the Act, and all other employees.

MOCK FORD SALES, INC.